

*C. Melody P. L. II*



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: CC Distributors, Inc.

File: B-225446

Date: February 18, 1987

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### DIGEST

1. Contracting officer properly may reopen discussions and request second round of best and final offers under request for proposals for operation of a supply store where, based on comparison with existing contract prices and general knowledge of the market, contracting officer determines that all offerors' unit prices for hundreds of supply items are too high.

2. Contracting agency does not create improper auction by reopening discussions and requesting second round of best and final offers where there is no indication that agency's purpose was to give one offeror a competitive advantage or that agency established a price goal for offerors or disclosed their relative price standing.

3. Contracting agency letter to offerors satisfies basic requirements in Federal Acquisition Regulation for written request for best and final offers where it states that discussions have been reopened, indicates the areas of concern with each offeror's proposal, and calls for submission of revised proposals as best and final offers.

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### DECISION

CC Distributors, Inc. challenges the Air Force's decision to request a second round of best and final offers under request for proposals (RFP) No. F16602-86-R-0011 for a Contractor Operated Civil Engineering Supply Store (COCESS) at Barksdale Air Force Base, Louisiana. The protester argues that the Air Force had adequate information to make award based on the first round of best and final offers and that its request for a second round created an improper auction among the offerors. We deny the protest.

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The RFP, issued on May 9, 1986, called for operation of a COCESS at Barksdale AFB as the source of supply for over 3000 items of hardware and equipment listed in exhibit A to the RFP. Several offerors, including the protester, submitted proposals by the initial closing date, July 31.<sup>1/</sup> Discussions then were held with all the offerors, with best and final offers due by October 6.

According to the Air Force, after reviewing the best and final offers, the contracting officer concluded that all the offerors had either overpriced or underpriced by a significant margin a large number of the supply items listed in exhibit A of the RFP. As a result, on October 24, the contracting officer sent each offeror a letter advising that discussions were reopened because "information available including pricing at this time is inadequate to reasonably justify contractor selection and award based on the best and final offers received." The letter enclosed the exhibit A submitted by each offeror with its first best and final offer, indicating the items which the contracting officer found either excessively or nominally priced. The letter concluded by advising each offeror to resubmit an exhibit A, with any revisions, as its "best and final proposal" by November 7.

On October 31, CC Distributors filed its protest with our Office challenging the decision to request a second round of best and final offers. By letter dated November 4, the Air Force notified all the offerors under the RFP that the due date for a second round of best and final offers was postponed indefinitely pending resolution of the protest.

With regard to reopening discussions after submission of best and final offers, Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.611(c) (1986), provides:

"After receipt of best and final offers, the contracting officer should not reopen discussions unless it is clearly in the Government's interest to do so (e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final

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<sup>1/</sup> Because award has not yet been made, much of the information provided by the Air Force, including the number and identity of the offerors and their proposals, was submitted to our Office in camera.

offers received). If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors still within the competitive range."

In this case, the contracting officer based the decision to reopen discussions on her finding that all the offerors had either overpriced or underpriced many of the more than 3000 supply items in exhibit A when compared with the prices available under the current contract and the contracting officer's general knowledge of the market. In the contracting officer's view, making award to any of the offerors on the basis of their first best and final offer could result in the Air Force paying over 1000 percent more than a fair and reasonable price for many items. Thus, the contracting officer concluded that no award reasonably could be made under the RFP without reopening discussions and giving the offerors an opportunity to revise their prices.

The protester maintains that it was unreasonable for the Air Force to reopen discussions simply for price revisions. We disagree. In our view, reopening discussions clearly was in the government's interest as provided in FAR, 48 C.F.R. § 15.611(c), since any award made on the basis of the first best and final offers would result in prices the agency considered too high for a significant part of its needs under the RFP. Further, the decision to reopen discussions without requesting anything more than best and final offers does not create an improper auction, where, as here, there is no indication that the contracting agency's purpose was to give one offeror a competitive advantage or that the agency established a price goal for the offerors or disclosed their relative price standing. Action Mfg. Co., B-222151, June 12, 1986, 86-1 CPD ¶ 546.

The protester disputes the contracting officer's determination that its proposed pricing is unbalanced, arguing that its proposal does not rely on enhanced prices for some items to compensate for losses on other nominally priced items.<sup>2/</sup> Even if, as the protester argues, an offeror's pricing approach is reasonable based on its competitive position and its assessment of the risk involved in an indefinite quantity contract such as this one, its

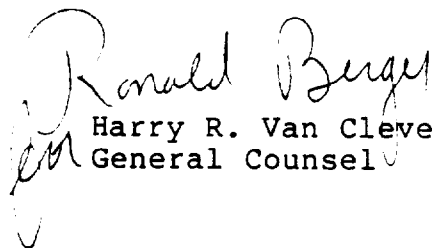
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<sup>2/</sup> While the Air Force report on the protest refers to the offerors' pricing as "unbalanced," it is clear from the record that the contracting officer's principal concern was that in her view the prices offered were in many instances too high.

prices still may be unreasonably high if the contracting officer finds that the supplies can be obtained for substantially less, as in this case, by comparison with the prices under the current contract. See International Alliance of Sports Officials, B-211549, Jan. 24, 1984, 84-1 CPD ¶ 110. Further, even assuming the contracting officer's concern about prices did not apply to the protester's proposal, once the decision was made to reopen discussions with some of the offerors, all the offerors in the competitive range, including those whose proposals were not considered deficient, also would have had to have been given an opportunity to submit new best and final offers.<sup>3/</sup> See Weinschel Engineering Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574.

The protester also contends that the Air Force's October 24 letter did not comply with FAR, 48 C.F.R. § 15.611(b), regarding the contents of a written request for best and final offers, because the letter did not state specifically that discussions were concluded or that it was an opportunity to submit a best and final offer, and did not refer to the standard FAR provision governing late submissions, modifications and withdrawals. We disagree. The October 24 letter stated that discussions were reopened; identified the areas in each offeror's proposal which should be reexamined; and concluded that the revised exhibit A to be submitted by the November 7 due date would constitute each offeror's "best and final proposal." As a result, the letter clearly put the offerors on notice that a second round of best and final offers was to be submitted; the protester itself interpreted the letter this way. In addition, under these circumstances the letter's failure to refer to the standard late submissions clause is a minor deficiency since there is no indication that the omission prejudiced any of the offerors.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel

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<sup>3/</sup> Contrary to the protester's argument, we see no reason why under these circumstances the contracting officer would have been required to reject the offers found to have proposed prices which the agency considered too high, instead of reopening discussions.